UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

DENNIS F. PADULA, Individually
and d/b/a Padula Roofing &
Sheet Metal Co. CASE NO. 89-01719
LYNDA A. PADULA, Individually

Debtors

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court has before it the Debtors' motion to avoid numerous judicial liens pursuant to §522(f)(l) of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code").

The motion first appeared on the Court's motion calendar at Utica, New York on January l5, l99l. Several judgment creditors appeared on the return date of the motion in opposition, however, the only judgment creditors whose opposition remains relevant on this motion are Allied Building Products Corp. ('Allied") and Trion, Inc. ("Trion").

Argument of the motion was continued following the January l5th date to January

29, l99l and finally to February l2, l99l, at which point opposition on behalf of Allied was withdrawn and the matter was submitted only as to Trion.

The Court gave both the Debtors and Trion until February 26, l99l to submit memoranda of law. Only Trion chose to do so.

JURISDICTION

The Court has jurisdiction of this contested matter pursuant to 28 U.S.C. §1334(b), §157(a), (b)(l) and (b)(2)(K).

FACTS

While the moving papers lack detail as to the date, amount, court, or priority of the various judgment liens sought to be avoided, the Court is advised without dispute that the Debtors filed a voluntary petition pursuant to Chapter l3 of the Code on September 22, l989.

Thereafter and on or about May l, l990, the case was converted to a case pursuant to Chapter 7 of the Code, and on December 4, l990, Debtors filed the instant motion.

Debtors allege that as of October l, l990, their marital residence located at 443 Deerwood Road, Utica, New York had a fair market value of $45,000 and that in addition to the various judgment liens sought to be avoided, their residence was encumbered, as of September 22, l989 by two mortgages securing a total debt of approximately $8,000. There is no dispute that the value of the Debtors' equity interest in the residence, after deducting the mortgages, exceeds the Debtors' full $20,000 exemption by at least $l6,986.l4, but there is a dispute as to the actual value

of the Debtors' residence on the date they initially filed their petition pursuant to Chapter 13.

The Debtors concede that two judgment liens cannot be avoided due to the excess equity and by Orders dated February 22, l99l, the judgment liens filed by Riverside Materials, Inc. - $24,594 ("Riverside") and Alliance Paving Materials, Inc. - $l4,263.44 ("Alliance") will remain on record subject to the $l0,000 equity exemption of the Debtor Dennis F. Padula.[1]

ARGUMENTS

Trion contends that because the amount of equity in the marital residence permits the Debtor Dennis F. Padula to claim his entire $l0,000 homestead exemption under §282 of the New York Debtor and Creditor Law ("D&CL") and §5206(a) of the New York Civil Practice Law and Rules ("NYCPLR"), he cannot avoid any of the judgment liens, including Trion's, because they do not impair his exemption.

Trion argues that to allow a debtor to enjoy the full exemption in his residence and still avoid all judgment liens to any extent, would allow a debtor to gain the benefit of any post-petition appreciation in the value of the property.

The Debtors contend that any judgment docketed subsequent to those of Riverside and Alliance must be avoided, since those are the only two judgments that will conceivably be paid from the equity which exists in excess of the exempt equity and, therefore, the Trion judgment must be avoided in its entirety.

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[1] The judgment of Riverside, Alliance and Trion were docketed only against the interest of Debtor, Dennis F. Padula and, therefore, constitute liens against only his interest in the marital residence, which is jointly owned with the Debtor, Lynda A. Padula.

DISCUSSION

The application of Code §522(f)(l) to various factual scenarios is by no means a settled area of bankruptcy law.

As noted by Robert Bowmar in his article "Avoidance Of Judicial Liens That Impair Exemptions In Bankruptcy: The Workings Of 11 U.S.C. §522(f)(l)", 63 Amer.Bankr.L.J. 375 (l989), "The Courts have not been consistent in their theories of what constitutes 'impairment' or of the extent to which a lien should be avoided once impairment is found." Id. at 375.

In the instant contested matter, the Court finds itself with an insufficient factual basis from which to reach a dispositive conclusion.

The parties do agree that there is equity in the Debtors' homestead that significantly exceeds the $l0,000 allowable to each Debtor under applicable New York State law. The actual amount of the excess equity, however, has not been determined and cannot be determined on the facts before the Court.

By virtue of an agreement reached with two judgment creditors, the Debtor, Dennis F. Padula, has consented to the continuation of the judgment liens docketed against him by Alliance in the sum of $l4,263.44 and Riverside in the sum of $24,594, subject only to his $l0,000 equity exemption.

As indicated, the only remaining judgment lienor opposing the relief sought by Debtors is Trion, whose judgment was admittedly docketed subsequent to those of Alliance and Riverside.

While the Court has considered Trion's argument which postures, in essence, that the

existence of excess equity, i.e. equity over and above the maximum equity exemptible under applicable law, negates the avoidance of any judgment liens while simply carving out the equity exemption from any proceeds realized upon a sale, forced or otherwise, of a debtor's residence, it cannot adopt it.

This Court has previously announced its methodology in arriving at "equity" in a Code §522(f)(1) context, however, it has not visited the factual scenario in which the debtor possesses excess equity and seeks to avoid judicial liens pursuant to Code §522(f)(l). In re Bovay, ll2 B.R. 503 (Bankr. N.D.N.Y. l989).

Author Bowmar observes in the aforementioned article that "In those cases where the equity exceeds the exemption,the liens should survive, up to the amount of the excess (which, after all is not exempt property of the debtor) but be avoided in any amount beyond that." 63 Amer.Bankr.L.J. 39l. See In re Cohen, l3 B.R. 350 (Bankr. E.D.N.Y. l98l); In re Duncan, 43 B.R. 833 (Bankr. D.Alaska l984); In re Carney, 47 B.R. 296 (Bankr. D.Mass l985); In re Kalli, 34 B.R. l9l (Bankr. D.Vt. l983); but c.f. 3 COLLIER ON BANKRUPTCY, ¶522.29 (l5th Ed. 1990).

While Trion contends that the Debtors should not be permitted to gain the benefit of any subsequent appreciation of the property's value, relying upon Chief Bankruptcy Judge Duberstein's decision in In re Blake, 38 B.R. 604 (Bankr. E.D.N.Y. l984), this Court must disagree.

The Court believes that Trion misreads In re Blake, supra, in that Chief Judge Duberstein did avoid the judgment lien in its entirety when he concluded that the equity in the debtor's residence did not exceed his exemption under New York State law.

Chief Judge Duberstein observed that, "Since the debtor's residence has been valued at $7,000, he is entitled to a homestead exemption for that amount. Accordingly, the debtor may avoid the judicial lien to the extent of $7,000 and the entire amount of the judicial lien of $l2,404.60

is allowed as an unsecured claim." Id. at 608. (emphasis supplied).

Factually, however, In re Blake, supra, is not helpful since there was no excess equity in the debtor's property as is the case here.

Contrary to Trion's position, this Court adopts the conclusion of the Bankruptcy Appellate Panel of the Ninth Circuit which held in In re Galvan, ll0 B.R. 446 (9th Cir. BAP l990) that "the unsecured portion of a judicial lien is properly avoided under §522(f) as it 'impairs' the debtor's right to fully realize any homestead exemption and post-petition property appreciation." Id. at 452.

Given the instant facts, however, the Court cannot perform the mathematical analysis necessary to determine what portion, if any, of the Trion judgment lien is unsecured and, therefore, should be avoided, nor can the Court simply accept the Debtors' assertion that there can be no equity in their residence over and above the Riverside and Alliance judgments.

In the absence of competent proof as to the actual value of Debtors' residence as of the date they filed their Chapter l3 case, there can be no final disposition of Debtors' motion pursuant to Code §522(f)(l) insofar as it seeks to avoid the judgment lien of Trion.

Based on the foregoing, it is

ORDERED that an evidentiary hearing will be held before this Court on July 15, l99l at 2:00 p.m. for the purpose of taking proof as to the value of the Debtors' residence located at 443 Deerwood Road, Utica, New York as of September 22, l989, as well as any other evidentiary matters the parties may deem appropriate in support of or in opposition to Debtors' motion pursuant to Code §522(f)(l).

Dated at Utica, New York
this day of June, l99l

STEPHEN D. GERLING
U.S. Bankruptcy Judge